

# State of Colorado



**Bill Ritter, Jr.**  
*Governor*

**Rich Djokic**  
*Board Chair*

**Kristin F. Rozansky**  
*Board Director*

**State Personnel Board**  
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## Meeting Minutes October 16, 2007

The State Personnel Board met in public session on Tuesday, October 16, 2007, at the Colorado Department of Human Services, Grand Junction Regional Center, 2800 D Road, Grand Junction, Colorado 81501-4721.

The meeting was called to order at approximately 10:30 a.m. Board Members Roberto Corrada, Rich Djokic, and John Zakhem were present in person. Board Members Dana Shea-Reid and Robert Thompson were present via teleconferencing from the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.

Kristin F. Rozansky, Board Director, and Assistant Attorney General Roxane Baca, Board Counsel, were present in person. Jane Sprague, Legal Assistant, was present via teleconferencing.

### **I. REPORT OF RICH GONZALES, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])**

Mr. Gonzales gave a brief report to the Board, stating that he was meeting with the Joint Budget Committee, and that the state is now in its second year of funding achievement pay. In addition, Mr. Gonzales stated that DPA is developing a new personal leave policy in which there will be no differentiation between sick leave and annual leave. With regard to town hall meetings, Mr. Gonzales reported that he continues to conduct these meetings with state employees, and it is an asset to have the Board's Director attend such meetings. Finally, he stated that DPA is strongly promoting the grievance procedures because of DPA's belief in this process and its benefit to state employees.

### **II. REQUESTS FOR RESIDENCY WAIVERS**

#### **A. October 1, 2007 Report on Residency Waivers**

Director Rozansky reported that there were currently no new residency waiver requests pending.

### **III. PENDING MATTERS**

- A. Joseph MacDonald v. Department of Transportation, State Personnel Board case number 2007B030.

Following a discussion regarding the Administrative Procedure Act, the Colorado Rules of Civil Procedure, and the Initial Decision of the Administrative Law Judge, Mr. Djokic proposed that the Board address the matter of motions to stay in a rulemaking setting in the future. Director Rozansky stated that she and Board Counsel Baca would research this issue and report to the Board.

Mr. Corrada moved to deny Respondent's Motion to Stay. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

### **IV. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD**

- A. Edward Lawrence Donaldson v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2006B051(C).

The Board deliberated on this matter and made a series of motions as follows:

(1) Mr. Corrada moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Mr. Thompson seconded the motion. The motion failed as Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic voted in opposition to the motion; Mr. Corrada and Mr. Thompson voted in favor of the motion.

(2) Mr. Zakhem moved to adopt the findings of fact of the Administrative Law Judge and conclusions of law 1 and 4, to reverse the ALJ on conclusions of law 2 and 3, and to order that termination by the appointing authority was proper, and the ALJ's order to reduce the five-day suspension to one day and to rescind the corrective action was proper. Ms. Shea-Reid seconded the motion. The motion failed as Mr. Corrada, Ms. Shea-Reid and Mr. Thompson voted in opposition to the motion; Mr. Zakhem and Mr. Djokic voted in favor of the motion.

(3) Mr. Corrada moved to adopt the findings of fact of the Administrative Law Judge and conclusions of law 1, 3, and 4, to reverse the ALJ on conclusions of law 2, and to order that termination be modified to a 60-day suspension. The motion failed for lack of a second.

(4) Mr. Djokic moved to adopt the findings of fact of the Administrative Law Judge and conclusions of law 1 and 4, to reverse the ALJ on conclusions of law 2 and 3, and to order that the corrective action, the five-day suspension, and termination were within the range of reasonable alternatives. Ms. Shea-Reid seconded the motion. The motion failed as Mr. Corrada, Mr. Thompson and Mr. Zakhem voted in opposition to the motion; Ms. Shea-Reid and Mr. Djokic voted in favor of the motion.

(5) Mr. Zakhem moved to adopt the findings of fact of the Administrative Law Judge and conclusions of law 1 and 4, to reverse the ALJ on conclusions of law 2 and 3, and to order that termination by the appointing authority was proper, and the ALJ's order to reduce the five-day suspension to one day and to rescind the corrective action was proper. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic. Mr. Corrada and Mr. Thompson voted in opposition to the motion.

## **V. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Daniel Schaefer v. Regents of the University of Colorado, University of Colorado at Boulder, Department of Public Safety, University Police Department, State Personnel Board case number 2008G014.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Corrada seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

- B. Suzanne Belanger v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2007G093.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

**VI. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES**

- A. Jason P. Monett v. Department of Corrections, Colorado State Penitentiary, State Personnel Board case number 2006G074 (September 24, 2007).
- B. Jeff Baughman v. Colorado State University, State Personnel Board case number 2007B076 (October 4, 2007).
- C. Timothy Nawrocki v. Department of Public Safety, State Personnel Board case number 2007B097 (October 4, 2007).

**VII. REVIEW OF THE MINUTES FROM THE SEPTEMBER 18, 2007 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Mr. Zakhem moved to approve the minutes of the September 18, 2007 meeting as submitted. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

**VIII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 18, 2007 PUBLIC MEETING:**

- A. Barbara Pridemore v. Department of Public Health & Environment, State Personnel Board case number 2007G073.

The Board voted to accept Complainant's information Sheet as timely and based on extenuating circumstances, including, but not limited to, the lateness with which Respondent served its mandatory disclosures on Complainant, and the Board's determination that neither party suffers prejudice by a reversal, the Board voted to reverse the Amended Dismissal Order and to remand the matter to the Administrative Law Judge. Notwithstanding Board Rule 8-50(C), the ALJ is to consider the case on its merits based upon both of the parties' information sheets and render a preliminary recommendation.

- B. Selisa Hall v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2008G010.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the hearing.

**IX. REPORT OF DAVID KAYE, DIRECTOR OF THE DIVISION OF HUMAN RESOURCES, DPA**

Mr. Kaye reported that he and Joi Simpson, from the Division of Human Resources (DHR)'s Compensation Unit, would be briefly presenting the new personal leave policy to the Board and offered to have Ms. Simpson return to the Board for its November meeting, if requested, to answer questions about the new policy. Ms. Simpson stated that DPA was getting feedback from stakeholders while the policy was being developed and that rulemaking was anticipated in December. Mr. Djokic requested that Ms. Simpson answer the Board's questions at its November meeting.

## **X. ADMINISTRATIVE MATTERS & COMMENTS**

### **A. ADMINISTRATIVE MATTERS**

- Budget Report
- Cases on Appeal to the Board and to Appellate Courts
- Signature of Board members on Minutes of Board meetings

Board Counsel Baca advised the Board that signatures on the meeting minutes were not required. However, Mr. Zakhem and the other Board members expressed a desire to continue to sign all minutes generated by the Board.

- Mandate in MacDonald v. Department of Transportation, State Personnel Board Case No. 2006B098, Court of Appeals No. 07CA0816

### **B. OTHER BOARD BUSINESS**

- Staff Activities

Director Rozansky reported that Linda Whitaker, formerly a Legal Assistant at the Attorney General's office, was filling in for Ms. Woods in the afternoons in a temporary assignment and that staff duties were being shifted between the Legal Assistant and the ALJs to accommodate Ms. Woods' absence. The Director stated that Ms. Woods and her baby were doing well. In addition, Ms. Rozansky reported that she had gone to Pueblo with Mr. Gonzales to meet with DPA employees and that fall training for staff was continuing, including a Legal Support Staff Writing Class at the Colorado Bar Association, attended by Ms. Sprague and Ms. Woods; the Statewide Alternative Dispute Resolution Conference on September 28, attended by the Board's ALJs and Legal Assistant; the Annual Employment Law Seminar for the Board's ALJs and Director on November 8; and the mandatory Judicial Ethics for the Board's Director, ALJs, and Legal Assistant on November 30. Director Rozansky stated that training on the Layoff Rules by the ALJs was scheduled for December

11, 2007, and that it would be submitted for continuing legal education accreditation.

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

Mr. Djokic thanked Director Christian Mueller and the Grand Junction Regional Center staff for hosting the Board Meeting.

**XI. PROPOSED LEGISLATION AND/OR RULEMAKING**

**XII. EXECUTIVE SESSION**

- A. Case Status Report
- B. Minutes of the September 18, 2007 Executive Session
- C. Other Business

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**APPROVED THIS 20th DAY OF NOVEMBER, 2007.**

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Rich Djokic, Board Chair

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Roberto Corrada, Member

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Dana Shea-Reid, Member

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Robert Thompson, Member

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John Zakhem, Member